(5)

C/2000

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

MISC. CIVIL CASE NO. 145 OF 2004 Single Bench

IN THE MATTER OF:

PETITIONER: - **ARDESHIR B. CURSETJEE & SONS LIMITED, A COMPANY INCORPORATED UNDER THE RELEVANT PROVISIONS OF THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE AT MACKINNON MACKENZIE BUILDING, 4, SHOORJI VALLABHDAS MARG, BALLARD ESTATE, MUMBAI 400 001.**

Presented by Sri ... Rakesh Dubey
dated ... 9-7-04

VERSUS

RESPONDENT - **MUNICIPAL CORPORATION RAIPUR THROUGH: - THE COMMISSIONER MUNICIPAL CORPORATION MALVIYA ROAD RAIPUR (C.G.)**

MEMO OF REQUEST UNDER SECTION 11 (6) OF THE ARBITRATION AND CONCILIATION ACT 1996 READ WITH PARAGRAPH 2 AND 3(2) OF THE SCHEME FOR APPOINTMENT OF ARBITRATORS BY THE CHIEF JUSTICE OF CHHATTISGARH HIGH COURT, 2002 FOR THE APPOINTMENT OF THE SOLE ARBITRATOR VALUE OF SUBJECT MATTER OF THE DISPUTE AMOUNTS AND AGGREGATES TO RS. 3,89,50,170.00:-

CHHATTISGARH.

NOTARY
B. L. SAHU
NOTARY (ADVOCATE)
Raipur District
GOVT. OF CHHATTISGARH.

(126)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक MCC No. 145/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

22.08.2006

Smt. Fouzia Mirza, learned counsel for the petitioner.
Shri Ashish Shrivastava, learned counsel for the respondent.

The petitioner has preferred this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') read with paragraphs 2 & 3 (2) of the scheme for appointment of arbitrators by the Chief Justice of Chhattisgarh High Court, 2002, for appointment of sole arbitrator.

It is not in dispute that the petitioner and the respondent entered into a contract agreement for wet dredging of deposited organic and inorganic silt in the Budha Talab (Lake) at Raipur with average depth of cut of about 1.5 m and disposing the silt on low-lying land or abandoned quarries as advised at a distance of (C.G.) upto 0.5 km and extra for every 0.5 km or part thereof.

It is submitted by learned counsel for the petitioner that the above agreement contains Clause 11.2.1 of the general conditions of the contract agreement which is the integral part of the agreement, according to which any dispute or difference arising between the parties, is to be referred to the sole arbitrator to be selected by the contractor from amongst the panel of three names indicated by the Raipur Municipal Corporation, at the time of reference of the disputes to arbitration and the award of the Arbitrator shall be final and binding on both the parties. The

T.I.O.

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मामला क्रमांक MCC No 145/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

procedure laid down in Indian Arbitration Act of 1996 and the rules made thereunder from time to time shall apply in the mater of the reference.

It is further contended that there is a dispute between the parties in relation to the work of agreement. Number of correspondences were made by the petitioner for redressal of his grievance and ultimately a notice dated 16th June 2004 of Annexure P-6 addressed to the Dy. Commissioner (Finance), Municipal Corporation, Raipur, was sent to the respondent detailing the dispute arose between parties out of the contract agreement and calling upon the respondent for referring the above dispute for arbitration as per Clause 11(2) of the contract agreement. Subsequently, several reminders of Exs.P-7, P-8 and P-9 were also addressed to the respondent, however, when no action was taken by the respondent as per Clause 11 (2) of the contract agreement, this petition has been filed for appointment of sole arbitrator.

The respondents in their reply have raised a objection that since the notices have not been addressed to the proper authority and it is addressed to Dy. Commissioner (Finance) which is not a valid notice within the meaning of Clause 11 (2) of the contract agreement, no action could be taken under Section 11(6) of the Act for want of notice. However, after filing of the above petition the petitioner as also the respondent have suggested the names of arbitrators to be appointed for referring the dispute arose between the parties.

I have heard learned counsel for the parties.

P.T.O.

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मामला क्रमांक MCC.No. 145/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The contract agreement between the parties is not in dispute. It is also not in dispute that there is some dispute or differences out of the contract agreement between the parties which may be referred to the arbitrator for adjudication as per Clause 11(2) of the contract agreement and the instant dispute arose in the jurisdiction of this Court and as such this Court can entertain this petition for appointment of arbitrator.

So far as the objection of the respondent that the notice addressed to Dy. Commissioner (Finance) of the Municipal Corporation, Raipur is not valid, is concerned, this objection cannot be accepted in view of the fact that the respondent was well aware of the dispute between the parties and the respondent was duty bound to act in accordance with Clause 11(2) of the contract agreement and since he has failed to appoint arbitrator, this Court has jurisdiction to appoint arbitrator as per Section 11(6) of the Act.

As a result, the application is allowed and a case for appointment of an arbitrator is held to be made out.

However, at the time of hearing it was submitted by the parties to the proceedings that they have no objection if Hon'ble Shri Justice C.P. Sen, retired Judge of M.P. High Court, Jabalpur is appointed as the sole arbitrator to adjudicate the dispute.

I, therefore, hereby appoint Hon'ble Shri Justice C.P. Sen, retired Judge of M.P. High Court, Jabalpur, presently residing at Jnanranjan Sen

I.I.O.

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मामला क्रमांक MCC. No. 145/09 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Marg, 205, Congress Nagar, Nagpur-440012, as Arbitrator, subject to his consent.

The Hon'ble Arbitrator may settle his terms and conditions and remunerations.

Registry to intimate Hon'ble Shri Justice C.P. Sen, retired Judge of M.P. High Court, about his appointment as Arbitrator and to send all the papers along with address of the parties.

Parties are also directed to approach Hon'ble Shri Justice C.P. Sen (Retd.), who is presently residing at Jnanranjan Sen Marg, 205, Congress Nagar, Nagpur and to submit papers and to take part in arbitration proceedings.

Sd/-
Dhirendra Mishra
Judge

P.T.O.

16.9.09 30.9.09